

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6678

Joint Petition of Lightyear Holdings, Inc. and)
Metracom Corporation of Massachusetts for)
Approval of a Merger, Transfer of Control and)
Name Change)

Order entered: 10/3/2002

I. INTRODUCTION

This case involves a petition filed on November 13, 2000, by Lightyear Holdings, Inc., ("Lightyear") and Metracom Corporation of Massachusetts ("Metracom") (collectively the "Petitioners"), seeking Vermont Public Service Board ("Board") approval *nunc pro tunc*, under 30 V.S.A. §§ 107, 109, and 231, of a merger transaction whereby Metracom became a wholly-owned subsidiary of Lightyear.¹ Metracom also seeks approval of a name change to Lightyear Telecommunications LLC.

On September 20, 2002, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the transfer of control. The Department noted that the transaction would not detrimentally impact consumers and should not cause them inconvenience or confusion as Metracom does not offer service in Vermont. Further, the Department had no objection to the issuance of an order without hearing or further investigation.

II. FINDINGS OF FACT

Based upon the petition and accompanying documents, the Board makes the following findings of fact.

1. Metracom is a Delaware corporation authorized to provide telecommunications service in Vermont pursuant to CPG No. 363, issued on April 29, 1998. Metracom has received

1. The parties' petition calls for approval of the transaction *nunc pro tunc*. That legal mechanism can only be applied to correct a record, to make an order relate back to a time when a case was ripe for decision and a decision should have been recorded, but was not. 49 C.J.S. §123 *et seq.* It is not the same as retroactivity, and cannot be used to make a decision effective before the time of the Order in this docket.

and filed with the Board all documents necessary to effect a corporate name change to Lightyear Telecommunications LLC. Petition at 2 and Exhibit A.

2. Lightyear is a Delaware holding company which holds no regulatory licenses from this or any agency. Petition at 2.

3. Lightyear acquired Metracom through a transaction whereby Metracom merged with and into a wholly-owned acquisition subsidiary of Lightyear: Metracom Acquisition Corp. Following the transaction, Metracom continued to operate as a wholly-owned subsidiary of Lightyear. Petition at 2.

4. The transaction did not result in any changes to the rates or service offerings of Metracom. In addition, Metracom does not operate, and does not have any customers in Vermont. Petition at 2 and 4.

5. Completion of the proposed transaction will serve the public interest in that it will allow Metracom to strengthen its position in the competitive telecommunications marketplace. This may in turn enable Metracom to provide improved service offerings at increasingly competitive terms and conditions. Petition at 5.

III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. §§ 107, 109, 231 and 311. These statutes condition approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A. § 107). The statutes also condition approval of a merger and acquisition upon a finding that the merger will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A. § 311). These standards are met in this case.

30 V.S.A. § 231(a) provides that the Board may amend or revoke any CPG for good cause, after an opportunity for hearing. Since there is no controversy surrounding Metracom's name change, it follows that good cause exists to amend Metracom's CPG to reflect the new name of the holder of the certificate. As for whether a hearing is necessary, we conclude that it is not. First, there is no genuine issue of material fact as to whether Metracom's CPG should be amended and, consequently, under V.R.C.P. 56, a hearing is unnecessary. Second, the

Petitioners have asked that the CPG be amended, and the Department has recommended that the petition be approved without hearing. Finally, 30 V.S.A. § 231(a) requires only the opportunity for a hearing, thus acknowledging that a hearing is not always necessary prior to amendment.

The proposed merger and transfer of control transaction will promote the public good, because the transfer of control of Metracom to Lightyear through the merger agreement will allow Metracom the opportunity to achieve a stronger position in the competitive telecommunications marketplace. In the competitive arena of telecommunications, the overall effect of this transfer may promote more customer choice in terms of services, with stronger competitors in the Vermont telecommunications market. It should also be noted that the transfer of control will not have an adverse impact on Vermont consumers as Metracom does not currently operate in Vermont.

For all of the above reasons, the proposed merger and transfer of control of Metracom should be approved.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The transfer of control of Metracom Corporation of Massachusetts is approved.
2. The merger of Metracom Corporation of Massachusetts with and into Metracom Acquisition Corp., will not obstruct or prevent competition in the market for telecommunications services in Vermont and, therefore, is approved.
3. A Certificate of Consent to the merger shall be issued.
4. The name change of Metracom Corporation of Massachusetts to Lightyear Telecommunicationst LLC is approved.
5. Metracom Corporation of Massachusetts shall file revisions to its tariff reflecting its new name within 30 days of the date of this Order.

DATED at Montpelier, Vermont, this 3rd day of October, 2002.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: October 3, 2002

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.